



New South Wales

# **Tow Truck Industry Amendment (Scrap Metals Exemption) Regulation 2009**

under the

**Tow Truck Industry Act 1998**

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Tow Truck Industry Act 1998*.

DAVID CAMPBELL, MP  
Minister for Transport and Roads

## **Explanatory note**

The object of this Regulation is to exempt persons who only tow motor vehicles for use as scrap metal from the requirement to hold a licence or a drivers certificate under the *Tow Truck Industry Act 1998*.

This Regulation is made under the *Tow Truck Industry Act 1998*, including section 6 (3) (which authorises the regulations to create exemptions) and section 105 (the general regulation-making power).

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Clause 1            Tow Truck Industry Amendment (Scrap Metals Exemption) Regulation 2009

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under the

Tow Truck Industry Act 1998

### **1 Name of Regulation**

This Regulation is the *Tow Truck Industry Amendment (Scrap Metals Exemption) Regulation 2009*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

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## Schedule 1      Amendment of Tow Truck Industry Regulation 2008

### [1]    Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

*exemption authority* means an exemption authority granted under clause 25E.

### [2]    Part 2, Division 4

Insert after clause 25:

#### **Division 4      Exemption for persons who tow scrap metal**

##### **Subdivision 1      Exemption from requirement to hold a licence**

#### **25A    Exemption from requirement to hold a licence**

- (1) A person who carries on a business as a tow truck operator is exempt from the requirement under section 15 of the Act to hold a licence if:
  - (a) the only towing work that tow trucks used in the business engage in is the collection of motor vehicles for conveyance to a scrap metal facility (that is, no tow trucks are used in towing work that involves the collection of motor vehicles for conveyance to a facility for repair, reuse or resale, either in their original form or as parts), and
  - (b) the person holds an exemption authority that is in force, and
  - (c) the person complies with the conditions in subclause (2).

**Note.** A person who is exempt from the requirement under the Act to hold a licence because of this clause continues to be subject to the remainder of the Act.
- (2) An exemption authority is subject to the following conditions:
  - (a) a copy of the exemption authority must be carried at all times in each tow truck used in the business of the person who holds the exemption authority (*the business*),
  - (b) the approved signs issued with the exemption authority, or at a later time, must be displayed on the front and rear of each tow truck used in the business in positions where they are visible to persons outside the tow truck when the tow truck is being used to load, tow or unload a motor vehicle,

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- (c) the person who holds the exemption authority must produce the exemption authority to an authorised officer or police officer on demand whenever the person is at the place of business specified in the exemption authority,
- (d) any tow truck used in the business must be one on which a crane is mounted,
- (e) any tow truck used in the business must not be a tilt table top tow truck,
- (f) a list of all drivers who drive a tow truck used in the business must be maintained at the place of business specified in the exemption authority,
- (g) that list of drivers must be made available to an authorised officer or police officer on request,
- (h) only persons who are on that list of drivers may drive a tow truck used in the business,
- (i) each driver who drives a tow truck used in the business must be informed of the conditions that the exemption authority is subject to (that is, the conditions set out in subclause (1) (a) and this subclause),
- (j) the RTA must be notified in writing:
  - (i) of any proposed change in the particulars specified in the exemption authority, at least 7 days before the proposed change occurs, and
  - (ii) of the name of any driver who is proposed to drive a tow truck used in the business, in addition to the drivers nominated in the application for an exemption authority,
  - (iii) of the registration number, make and model of any tow truck proposed to be operated in the course of the applicant's business in addition to any tow truck nominated in the application for an exemption authority,
- (k) a record of all motor vehicles transported on a tow truck used in the business must be maintained at the place of business specified in the exemption authority and must be made available to a police officer or an authorised officer on request,
- (l) that record must include the following details in relation to each motor vehicle towed:
  - (i) the time and date on which the motor vehicle was towed,

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- (ii) details of where the motor vehicle was towed from and the destination of the tow,
  - (iii) the following identification details:
    - (A) the registration number of the motor vehicle, or
    - (B) if there is no registration number—the chassis number or the engine number of the vehicle, or
    - (C) if there is no registration number, chassis number or engine number or such numbers are obscured—the make, model and colour of the motor vehicle,
  - (m) that record:
    - (i) must be in the approved form, and
    - (ii) must be completed as soon as practicable in relation to each occasion on which a tow truck is used or operated in the business to tow a motor vehicle,
  - (n) each such record must be maintained at the place of business specified in the exemption authority for 5 years,
  - (o) the person who holds the exemption authority must not:
    - (i) forge or fraudulently alter an exemption authority (whether or not it is in force), or
    - (ii) give possession of an exemption authority to another person for the purpose of using it, or it being used, unlawfully, or
    - (iii) knowingly have possession of a forged or fraudulently altered exemption authority,
  - (p) the person who holds the exemption authority must, within 7 days of becoming aware that the exemption authority has been lost, stolen, damaged, destroyed, altered or defaced:
    - (i) notify the RTA in writing of that occurrence, and
    - (ii) in the case of a damaged, altered or defaced exemption authority—return it to the RTA,
  - (q) the person who holds the exemption authority must not in any way suggest or imply that the person may, because of the exemption authority, exercise any function apart from a function authorised by the exemption authority (and must not exercise a function authorised by the exemption authority otherwise than in accordance with subclause (1) (a) and this subclause),

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- (r) a driver who drives a tow truck used in the business must not in any way suggest or imply that the driver may, because of the exemption authority, exercise any function apart from a function authorised by the exemption authority (and must not exercise the function authorised by the exemption authority otherwise than in accordance with the conditions of the exemption authority),
  - (s) the person who holds the exemption authority must not in any way use or attempt to use the exemption authority to exercise any function apart from a function authorised by the exemption authority,
  - (t) a driver who drives a tow truck used in the business must not in any way use or attempt to use the exemption authority to exercise any function apart from a function authorised by the exemption authority.
- (3) A person who holds an exemption authority is guilty of an offence if any condition of the exemption authority is contravened.  
Maximum penalty: 25 penalty units.
- (4) A person who drives a tow truck used in the business of a person who holds an exemption authority is guilty of an offence if any condition of the exemption authority specified in subclause (2) (b), (r) or (t) is contravened by that driver.  
Maximum penalty: 25 penalty units.

### **Subdivision 2 Exemption from requirement to hold a drivers certificate**

#### **25B Exemption from requirement to hold a drivers certificate**

- (1) A person who:
- (a) is employed or engaged by a tow truck operator who holds an exemption authority, and
  - (b) was nominated to the RTA in the application for that exemption authority or at a later time and is included on the list required to be maintained by clause 25A (2) (f), and
  - (c) complies with the condition in subclause (2),

is, in relation to the tow truck operator's business, exempt from the requirement under section 23 of the Act to hold a drivers certificate.

**Note.** A person who is exempt from the requirement under the Act to hold a drivers certificate because of this clause continues to be subject to the remainder of the Act.

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- (2) The exemption created by subclause (1) is subject to the condition that a person must produce a copy of the relevant tow truck operator's exemption authority to an authorised officer or police officer on demand whenever the person is:
- (a) driving or standing a tow truck on a road or road related area, or
  - (b) carrying out, or attempting to obtain, any towing work.

### **Subdivision 3 Exemption authorities**

#### **25C Application for exemption authority**

- (1) A tow truck operator may apply to the RTA for an exemption authority.
- (2) An application for an exemption authority must be in the approved form and contain the following:
  - (a) if the applicant is an individual—the name of the applicant, the applicant's current residential address and date of birth,
  - (b) if the applicant is a corporation—the name of the corporation, the name of each director or manager involved in the business of the applicant, the address of the registered office of the corporation (if different from the applicant's place of business) and details of the incorporation of the corporation,
  - (c) if the applicant's business is carried on in partnership—the name of the partnership and the name, current residential address and date of birth of each partner,
  - (d) if the applicant's business has a trading name—details of that trading name and evidence that it has been registered as a registered business name,
  - (e) the address of the applicant's place of business,
  - (f) particulars of the tow truck operator's business or of the business the tow truck operator proposes to carry on,
  - (g) the registration number, make and model of each of the tow trucks to be operated in the course of the applicant's business,
  - (h) the name, driver licence number and date of birth of each person who is employed or engaged by the applicant to drive, use or operate tow trucks to tow motor vehicles as part of the applicant's business,

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- (i) the name and date of birth of each close associate of the applicant (including any aliases by which the close associate is or was known),
  - (j) proof that the applicant holds public liability insurance for the applicant's business,
  - (k) any other particulars that are required by the approved form.
- (3) The application must be accompanied by the application fee determined by the RTA by order published in the Gazette.

**Note.** An applicant for an exemption authority commits an offence under section 307A of the *Crimes Act 1900* if the applicant makes a false or misleading statement in the application.

- (4) For the purposes of this clause, a person is a **close associate** of an applicant for an exemption authority (whether or not that applicant is a corporation), if the person:
- (a) holds or will hold any relevant financial interest, or exercises any relevant power (whether in his or her own right, or through an agent or on behalf of any other person), in the business of the applicant, and by virtue of that interest or power is or will be able (in the opinion of the RTA) to exercise a significant influence over or with respect to the conduct of that business, or
  - (b) holds or will hold any relevant position, whether in his or her own right, or through an agent or on behalf of any other person, in the business of the applicant.
- (5) In this clause:
- relevant financial interest** in relation to a business means:
- (a) any share in the capital of the business, or
  - (b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

**relevant position** means the position of director, manager, and any other executive position and secretary, however those positions are designated.

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in the day to day management of the business concerned, or



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- (b) to participate in any directorial, managerial or executive decision, or
  - (c) to elect or appoint any person to any relevant position.

**25D Restrictions on granting exemption authority**

The RTA must refuse to grant an application for a exemption authority if:

- (a) the applicant will, in the opinion of the RTA, be engaged in towing work that involves the collection of motor vehicles for conveyance to a facility for repair, reuse or resale, either in their original form or as parts, or
- (b) the applicant is not, in the opinion of the RTA, a fit and proper person to hold an exemption authority or is otherwise not competent to engage in the collection of motor vehicles for conveyance to a scrap metal facility, or
- (c) the application is incomplete in a material particular, or
- (d) the application contains matter that is, in the opinion of the RTA, false or misleading in a material particular, or
- (e) any tow truck to be operated in the course of the applicant's business does not have a crane mounted on it, or
- (f) any tow truck to be operated in the course of the applicant's business is a tilt table top tow truck.

**25E Grant of exemption authority**

- (1) The RTA may determine an application for an exemption by granting an exemption authority or refusing the application.
- (2) An exemption authority must be in the approved form.
- (3) The RTA, on granting an exemption authority, must issue 2 signs, in the approved form, for each tow truck nominated by the applicant pursuant to clause 25C (2) (g).

**25F Duration of exemption authority**

An exemption authority continues in force for 2 years from the date on which it was granted or such shorter period as may be specified in the authority, unless it is sooner revoked under clause 25G.

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### **25G Revocation of exemption authority**

The RTA may revoke an exemption authority if the person who holds the authority or any person employed or engaged by the holder for the purposes of the holder's business:

- (a) has contravened any provision of the Act or this Regulation, or
- (b) has contravened any condition of the exemption authority specified in clause 25A (1) (a) or (2).

### **25H Proposed changes in particulars to be reflected in replacement exemption authority**

If the RTA has been notified of a change in the particulars specified in the exemption authority, the RTA may approve the proposed change of particulars by amending the exemption authority and granting a replacement exemption authority.

### **25I Proposed additional tow truck to be provided with additional signs**

If the RTA has been notified of a proposed additional tow truck to be used in the course of the business of the holder of an exemption authority, the RTA may approve the additional tow truck and issue 2 signs, in the approved form, for each such tow truck.

### **25J Requirement to return exemption authority**

If an exemption authority is revoked or has expired, the person who holds the exemption authority must immediately return the exemption authority, and all approved signs issued to the holder, to the RTA.

Maximum penalty: 15 penalty units.

### **25K Register of holders of exemption authority**

The RTA is to maintain a register of the persons who hold exemption authorities.